

109TH CONGRESS  
1ST SESSION

# H. R. 4052

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2005

Mr. SANDERS (for himself, Mr. GUTKNECHT, Mr. GEORGE MILLER of California, Mr. HINCHEY, Mr. DAVIS of Illinois, Ms. LEE, Mr. BISHOP of New York, Ms. WOOLSEY, Mr. EMANUEL, Mr. MURTHA, Mr. TAYLOR of Mississippi, Ms. BORDALLO, Mr. OBERSTAR, Mr. BRADY of Pennsylvania, Mr. DEFazio, Mrs. MALONEY, Mr. BROWN of Ohio, Mr. HOLT, Mr. BERRY, Mr. MARKEY, Mr. GRIJALVA, Ms. KILPATRICK of Michigan, Mr. LANTOS, Mr. FILNER, Mr. UDALL of New Mexico, Mr. MCGOVERN, Mr. KENNEDY of Rhode Island, Mr. FRANK of Massachusetts, Mr. VAN HOLLEN, Mr. DOYLE, Mr. PAYNE, Ms. LINDA T. SÁNCHEZ of California, Ms. MILLENDER-McDONALD, Mr. OLVER, Mr. PALLONE, Ms. NORTON, Ms. SCHAKOWSKY, Mr. DOGGETT, Mr. EVANS, Mr. VISCLOSKY, Mr. MEEK of Florida, Mr. WEXLER, Mr. BOEHLERT, Mr. MEEKS of New York, Mr. TIERNEY, Mr. ENGEL, Mr. CONYERS, Ms. ESHOO, Mr. ALLEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. RUSH, Mr. LYNCH, Mrs. NAPOLITANO, Ms. JACKSON-LEE of Texas, Mr. STRICKLAND, Mr. ROSS, Mr. SCHIFF, Ms. SLAUGHTER, Mr. MEEHAN, Mr. BLUMENAUER, Mr. MICHAUD, Mr. KILDEE, Mrs. CAPPS, Ms. KAPTUR, Mr. CASE, Ms. MCCOLLUM of Minnesota, Mr. UDALL of Colorado, Mr. KUCINICH, Mr. CUMMINGS, Mr. SCOTT of Virginia, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

# A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

## 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pension Benefits Pro-  
 5 tection Act of 2005”.

## 6 **SEC. 2. PROPER ADMINISTRATION OF INTERNAL REVENUE** 7 **LAWS AND NONDISCRIMINATION REQUIRE-** 8 **MENTS.**

9 (a) IN GENERAL.—The Secretary of the Treasury  
 10 shall take no action in contravention of section  
 11 204(b)(1)(G), 204(b)(1)(H)(i), or 204(g) of the Employee  
 12 Retirement Income Security Act of 1974, section  
 13 411(b)(1)(G), 411(b)(1)(H)(i), or 411(d)(6) of the Inter-  
 14 nal Revenue Code of 1986, or section 4(i)(1)(A) of the  
 15 Age Discrimination in Employment Act of 1967.

16 (b) DIRECTIVE.—The Secretary of the Treasury shall  
 17 apply section 411(b)(1)(H) of the Internal Revenue Code  
 18 of 1986 without regard to the portion of the preamble to  
 19 Treasury Decision 8360 (56 Fed. Reg. 47524–47603,

1 September 19, 1991) which relates to the allocation of in-  
 2 terest adjustments through normal retirement age under  
 3 a cash balance plan, as such preamble is and has been  
 4 since its adoption without the force of law.

5 **SEC. 3. PROTECTION OF PARTICIPANTS FROM CONVER-**  
 6 **SIONS TO HYBRID DEFINED BENEFIT PLANS.**

7 (a) ELECTION TO MAINTAIN RATE OF ACCRUAL IN  
 8 EFFECT BEFORE PLAN AMENDMENT.—

9 (1) AMENDMENT TO ERISA.—Section 204(b)(1)  
 10 of the Employee Retirement Income Security Act of  
 11 1974 (29 U.S.C. 1054(b)(1)) is amended by adding  
 12 at the end the following new subparagraph:

13 “(I)(i) Notwithstanding the preceding subpara-  
 14 graphs, in the case of a plan amendment to a defined ben-  
 15 efit plan—

16 “(I) which has the effect of converting the plan  
 17 to a plan under which the accrued benefit is ex-  
 18 pressed to participants and beneficiaries as an  
 19 amount other than an annual benefit commencing at  
 20 normal retirement age (or which has a similar effect  
 21 as determined under regulations issued under clause  
 22 (iv)), and

23 “(II) which has the effect of reducing the rate  
 24 of future benefit accrual of 1 or more participants,  
 25 such plan shall be treated as not satisfying the re-

1        requirements of this paragraph unless such plan meets  
2        the requirements of clause (ii).

3        “(ii) A plan meets the requirements of this clause if  
4        the plan provides each participant who has attained 40  
5        years of age or 10 years of service (as determined under  
6        section 203) under the plan at the time such amendment  
7        takes effect with—

8                “(I) notice of the plan amendment indicating  
9        that it has such effect, including a comparison of the  
10       present and projected values of the accrued benefit  
11       determined both with and without regard to the plan  
12       amendment, and

13               “(II) an election upon retirement to either re-  
14       ceive benefits under the terms of the plan as in ef-  
15       fect at the time of retirement or to receive benefits  
16       under the terms of the plan as in effect immediately  
17       before the effective date of such plan amendment  
18       (taking into account all benefit accruals under such  
19       terms since such date).

20        “(iii) For purposes of clause (i), an accrued benefit  
21       shall include any early retirement benefit or retirement-  
22       type subsidy (within the meaning of subsection (g)(2)(A)),  
23       but only with respect to a participant who satisfies (either  
24       before or after the effective date of the amendment) the

1 conditions for the benefit or subsidy under the terms of  
 2 the plan as in effect immediately before such date.

3 “(iv) The Secretary shall issue regulations under  
 4 which any plan amendment which has an effect similar  
 5 to the effect described in clause (i)(I) shall be treated as  
 6 a plan amendment described in clause (i)(I). Such regula-  
 7 tions may provide that if a plan sponsor represents in com-  
 8 munications to participants and beneficiaries that a plan  
 9 amendment has an effect described in the preceding sen-  
 10 tence, such plan amendment shall be treated as a plan  
 11 amendment described in clause (i)(I).”.

12 (2) AMENDMENT TO INTERNAL REVENUE  
 13 CODE.—Section 411(b)(1) of the Internal Revenue  
 14 Code of 1986 (relating to accrued benefit require-  
 15 ments for defined benefit plans) is amended by add-  
 16 ing at the end the following new subparagraph:

17 “(I) ELECTION TO MAINTAIN RATE OF AC-  
 18 CRUAL IN EFFECT BEFORE CERTAIN PLAN  
 19 AMENDMENTS.—

20 “(i) IN GENERAL.—Notwithstanding  
 21 the preceding subparagraphs, in the case  
 22 of a plan amendment to a defined benefit  
 23 plan—

24 “(I) which has the effect of con-  
 25 verting the plan to a plan under which

1 the accrued benefit is expressed to  
2 participants and beneficiaries as an  
3 amount other than an annual benefit  
4 commencing at normal retirement age  
5 (or which has a similar effect as de-  
6 termined under regulations issued  
7 under clause (iv)), and

8 “(II) which has the effect of re-  
9 ducing the rate of future benefit ac-  
10 crual of 1 or more participants, such  
11 plan shall be treated as not satisfying  
12 the requirements of this paragraph  
13 unless such plan meets the require-  
14 ments of clause (ii).

15 “(ii) REQUIREMENTS.—A plan meets  
16 the requirements of this clause if the plan  
17 provides each participant who has attained  
18 40 years of age or 10 years of service (as  
19 determined under subsection (a)) under  
20 the plan at the time such amendment  
21 takes effect with—

22 “(I) notice of the plan amend-  
23 ment indicating that it has such ef-  
24 fect, including a comparison of the  
25 present and projected values of the

1 accrued benefit determined both with  
2 and without regard to the plan  
3 amendment, and

4 “(II) an election upon retirement  
5 to either receive benefits under the  
6 terms of the plan as in effect at the  
7 time of retirement or to receive bene-  
8 fits under the terms of the plan as in  
9 effect immediately before the effective  
10 date of such plan amendment (taking  
11 into account all benefit accruals under  
12 such terms since such date).

13 “(iii) TREATMENT OF EARLY RETIRE-  
14 MENT BENEFITS AND RETIREMENT-TYPE  
15 SUBSIDIES.—For purposes of clause (i), an  
16 accrued benefit shall include any early re-  
17 tirement benefit or retirement-type subsidy  
18 (within the meaning of subsection  
19 (d)(6)(B)(i)), but only with respect to a  
20 participant who satisfies (either before or  
21 after the effective date of the amendment)  
22 the conditions for the benefit or subsidy  
23 under the terms of the plan as in effect  
24 immediately before such date.

1                   “(iv) REGULATIONS.—The Secretary  
2                   shall issue regulations under which any  
3                   plan amendment which has an effect simi-  
4                   lar to the effect described in clause (i)(I)  
5                   shall be treated as a plan amendment de-  
6                   scribed in clause (i)(I). Such regulations  
7                   may provide that if a plan sponsor rep-  
8                   resents in communications to participants  
9                   and beneficiaries that a plan amendment  
10                  has an effect described in the preceding  
11                  sentence, such plan amendment shall be  
12                  treated as a plan amendment described in  
13                  clause (i)(I).”.

14               (b) EFFECTIVE DATE AND RELATED RULES.—

15               (1) IN GENERAL.—The amendments made by  
16               this section apply to plan amendments taking effect  
17               before, on, or after the date of the enactment of this  
18               Act.

19               (2) SPECIAL RULE.—In the case of a plan  
20               amendment taking effect before 90 days after the  
21               date of the enactment of this Act, the requirements  
22               of section 204(b)(1)(I) of the Employee Retirement  
23               Income Security Act of 1974 (as added by this sec-  
24               tion) and section 411(b)(1)(I) of the Internal Rev-  
25               enue Code of 1986 (as added by this section) shall

1 be treated as satisfied in connection with such plan  
 2 amendment, in the case of any participant described  
 3 in such sections 204(b)(1)(I) and 411(b)(1)(I) in  
 4 connection with such plan amendment, if, as of the  
 5 end of such 90-day period—

6 (A) the notice described in clause (i)(I) of  
 7 such section 204(b)(1)(I) and clause (i)(I) of  
 8 such section 411(b)(1)(I) in connection with  
 9 such plan amendment has been provided to  
 10 such participant, and

11 (B) the plan provides for the election de-  
 12 scribed in clause (i)(II) of such section  
 13 204(b)(1)(I) and clause (i)(II) of such section  
 14 411(b)(1)(I) in connection with such partici-  
 15 pant's retirement under the plan.

16 **SEC. 4. PREVENTION OF WEARING AWAY OF EMPLOYEE'S**  
 17 **ACCRUED BENEFIT.**

18 (a) AMENDMENT TO ERISA.—Section 204(g) of the  
 19 Employee Retirement Income Security Act of 1974 (29  
 20 U.S.C. 1054(g)) is amended by adding at the end the fol-  
 21 lowing new paragraph:

22 “(6)(A) For purposes of paragraph (1), an applicable  
 23 plan amendment adopted by a large defined benefit plan  
 24 shall be treated as reducing accrued benefits of a partici-  
 25 pant if, under the terms of the plan after the adoption

1 of the amendment, the accrued benefit of the participant  
2 may at any time be less than the sum of—

3 “(i) the participant’s accrued benefit for years  
4 of service before the effective date of the amend-  
5 ment, determined under the terms of the plan as in  
6 effect immediately before the effective date, plus

7 “(ii) the participant’s accrued benefit deter-  
8 mined under the formula applicable to benefit accru-  
9 als under the current plan as applied to years of  
10 service after such effective date.

11 “(B) For purposes of this paragraph—

12 “(i) The term ‘applicable plan amendment’  
13 means a plan amendment which has the effect of  
14 converting the plan to a plan under which the ac-  
15 crued benefit is expressed to participants and bene-  
16 ficiaries as an amount other than an annual benefit  
17 commencing at normal retirement age (or which has  
18 a similar effect as determined under regulations of  
19 the Secretary).

20 “(ii) The term ‘large defined benefit plan’  
21 means any defined benefit plan which had 100 or  
22 more participants who had accrued a benefit under  
23 the plan (whether or not vested) as of the last day  
24 of the plan year preceding the plan year in which  
25 the plan amendment becomes effective.

1           “(iii) An accrued benefit shall include any early  
 2           retirement benefit or retirement-type subsidy (within  
 3           the meaning of paragraph (2)(A)), but only with re-  
 4           spect to a participant who satisfies (either before or  
 5           after the effective date of the amendment) the condi-  
 6           tions for the benefit or subsidy under the terms of  
 7           the plan as in effect immediately before such date.”.

8           (b) AMENDMENT TO INTERNAL REVENUE CODE.—  
 9           Section 411(d)(6) of the Internal Revenue Code of 1986  
 10          (relating to accrued benefit may not be decreased by  
 11          amendment) is amended by adding at the end the fol-  
 12          lowing new subparagraph:

13                       “(F) TREATMENT OF PLAN AMENDMENTS  
 14                       WEARING AWAY ACCRUED BENEFIT.—

15                       “(i) IN GENERAL.—For purposes of  
 16                       subparagraph (A), an applicable plan  
 17                       amendment adopted by a large defined  
 18                       benefit plan shall be treated as reducing  
 19                       accrued benefits of a participant if, under  
 20                       the terms of the plan after the adoption of  
 21                       the amendment, the accrued benefit of the  
 22                       participant may at any time be less than  
 23                       the sum of—

24                       “(I) the participant’s accrued  
 25                       benefit for years of service before the

1 effective date of the amendment, de-  
2 termined under the terms of the plan  
3 as in effect immediately before the ef-  
4 fective date, plus

5 “(II) the participant’s accrued  
6 benefit determined under the formula  
7 applicable to benefit accruals under  
8 the current plan as applied to years of  
9 service after such effective date.

10 “(ii) DEFINITIONS.—For purposes of  
11 this subparagraph—

12 “(I) APPLICABLE PLAN AMEND-  
13 MENT.—The term ‘applicable plan  
14 amendment’ means a plan amendment  
15 which has the effect of converting the  
16 plan to a plan under which the ac-  
17 crued benefit is expressed to partici-  
18 pants and beneficiaries as an amount  
19 other than an annual benefit com-  
20 mencing at normal retirement age (or  
21 which has a similar effect as deter-  
22 mined under regulations of the Sec-  
23 retary).

24 “(II) LARGE DEFINED BENEFIT  
25 PLAN.—The term ‘large defined ben-

1           efit plan’ means any defined benefit  
 2           plan which had 100 or more partici-  
 3           pants who had accrued a benefit  
 4           under the plan (whether or not vest-  
 5           ed) as of the last day of the plan year  
 6           preceding the plan year in which the  
 7           plan amendment becomes effective.

8                   “(III)   PROTECTED   ACCRUED  
 9           BENEFIT.—An accrued benefit shall  
 10          include any early retirement benefit or  
 11          retirement-type subsidy (within the  
 12          meaning of subparagraph (B)(i)), but  
 13          only with respect to a participant who  
 14          satisfies (either before or after the ef-  
 15          fective date of the amendment) the  
 16          conditions for the benefit or subsidy  
 17          under the terms of the plan as in ef-  
 18          fect immediately before such date.”.

19          (c) EFFECTIVE DATE AND RELATED RULES.—

20               (1) IN GENERAL.—Except as provided in para-  
 21          graph (2), the amendments made by this section  
 22          apply to plan amendments taking effect before, on,  
 23          or after the date of the enactment of this Act.

24               (2) SPECIAL RULE.—Notwithstanding para-  
 25          graph (1), the amendments made by this section

1       shall not apply in connection with any participant  
2       with respect to any plan amendment which has  
3       taken effect before 90 days after the date of the en-  
4       actment of this Act if, as of the end of such 90-day  
5       period, the plan provides that the participant's ac-  
6       crued benefit shall at no time be less than the sum  
7       described in section 204(g)(6)(A) of the Employee  
8       Retirement Income Security Act of 1974 (as added  
9       by this section) or section 411(d)(6)(F)(i) of the In-  
10      ternal Revenue Code of 1986 (as added by this sec-  
11      tion) in connection with such plan amendment.

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